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The Methods of Procedure in Making Public Improvements In Towns & Cities

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THE METHODS OF PROCEDURE IN MAKING PUBLIC IMPROVEMENTS IN TOWNS AND CITIES

BY

JOHN LLOYD JONES

THESIS

For the Degree of

BACHELOR OF SCIENCE

IN MUNICIPAL AND SANITARY ENGINEERING

IN THE

COLLEGE OF ENGINEERING

UNIVERSITY OF ILLINOIS

Presented June 1909

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June 1, 1909

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JOHN LLOYD JONES

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IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

DEGREE OF Bachelor of Science in Municipal and Sanitary Engineering.

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THE METHODS OF PROCEDURE IN MAKING PUBLIC IMPROVEMENTS IN TOWNS AND CITIES

Taxation

"Taxes may be defined as the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of the government and for all public needs."[1] For convenience taxes are generally divided into two general classes, direct taxes and indirect taxes. Direct taxes are those which are levied upon the immediate property, business, etc. of those who are to pay them. Indirect taxes are levied upon commodities and are paid, not as taxes, but as a part of the market price of the commodity. Direct taxes appear in three forms. At one end of the scale is the ordinary tax, and, at the other, the special assessment. Midway between these two classes falls the third class: fees and tolls. Each of these three classes has marks of similarity and marks of difference.

Special assessments are like ordinary taxes in that they are levied under the taxing power of the state to further some public purpose. Like ordinary taxes, too, they are levied according to some general rule, and, if necessary, may be collected by compulsion. On the other hand, the benefit resulting from special assessment is definite, and the amount of the tax levy is commensurate with the amount of benefit received. In the case

(1) Cooley, "Taxation," p. 1.

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of ordinary taxes, the presumption is that all citizens are benefitted equally, or nearly so, but the amount of the tax levied upon the citizen depends entirely upon his ability to pay. The field of special assessment is necessarily limited to local finance, while ordinary taxation has for its field of activity the whole realm of public revenue. Special taxes are a form or species of general taxes. They are raised by separate levies, and the proceeds are kept in a separate fund, which is to be used in the construction or improvement of objects or projects from which the contributors to the levy are to derive benefit. Special taxes appear in many municipalities in such forms as lighting rates, police rates, etc. At first sight these special taxes seem to bear a close resemblance to special assessments. There is, however, one vital difference which separates special taxes from special assessments: the special tax is levied, not according to the benefit the individual receives, but according to the evidences of the individual's ability to pay. "The rich are listed to the poor rate, and the blind are taxed for the lighting fund."[1]

Fees and tolls have at least two elements in common with special assessments. Firstly, both are imposed under the taxing power of the state. Secondly, both are levied in return for some service rendered by the government, with the understanding that the funds collected by the levy are to be used in defraying the costs of such service in whole or in part. Special assessments, however, are levied for local purposes; they are

(1) In Illinois, the special tax, when used in the proceedings of local improvements, has the rather technical meaning that the assessment is levied according to frontage or other

apportioned within a territorial district, and the burden caused by their apportionment falls upon certain individuals as members of a class. Fees may be either general or local; they are collected from the individual as such on the event of some specified governmental service. In the case of special assessment, there is one collection, or at most a collection by installments bearing interest. Fees are collected by a permanent collection machinery. Again, the benefit of the governmental service, for which the special assessment is levied, is generally realized through the enhanced value of real property, and consequently the assessment is levied on real property. Special assessments, then, "are justifiable only so far as they are levied to cover so much of the cost as results in specific advantages to the property owner benefitted in proportion to these advantages."[1] Unlike special assessments, fees are usually levied on personal property. Furthermore, fees may be so adjusted that the revenue realized from the governmental service may be in excess of the cost of that particular service, at which point the excess may be considered as a form of indirect tax.

General History of Special Assessments

In America, taxation by special assessment first appeared in New York, September 1691. On this date the assembly of the Province of New York passed an act "for regulating the buildings, streets, wharfs, docks and alleys of the City of New York". This act authorized the mayor and aldermen to appoint

(1) For full discussion see Rosewater, "Special Assessments," pp. 128 - 132.

surveyors and supervisors for regulating the public interests of the city. It empowered "the Aldermen and Common Council, together with the said Surveyors and Supervisors, at their said meeting, to impose any reasonable tax upon all Houses within the said City, in proportion to the benefit they shall receive thereby, for and towards the making, cutting, altering, enlarging, amending, cleansing and scouring all and singular the said Vaults, Drains, Shoars, Pavements and Pitching aforesaid, and in default of payment of the sum to be charged, it shall and may be lawful to and for the Mayor and Aldermen, etc., so authorized as aforesaid _____ to levy the said sum and sums of Money, so assessed, by distress and sale of the Goods of the parties chargeable therewith, and refusing and neglecting to pay the same, rendering the Overplus, if any be."[1]

Very little use was made of this act, but it was practically re-enacted in 1787. There were, however, several changes and new elements in this new statute. In the first place, the method of procedure for levying the assessment was made much more definite and explicit. Under the new arrangement five disinterested free-holders estimated the cost of the improvement and assessed this cost, fairly and impartially, according to their best skill and judgment, not upon all the houses in the city, but only upon those that were intended to be benefitted.[2] This outlines the early history os special assessment in New York. Other colonies and states were not slow in following the example set by

(1) For full text of this act, see Wm. Bradford, "Acts of the Assembly of the Province of New York." p. 12.

(2) See Laws of New York, 1 Greenleaf 441.

New York, and by the time the states united to form the United States, taxation by special assessment was by no means an uncommon method of procedure. Since 1787, the development of the special assessment has been made largely by legislation in the form of statutes, which may be divided into three general classes, namely:

1. Statutes which limit the power of corporations in levying the assessment; 2. Statutes which distribute this power among the various municipal authorities; and, 3. Statutes which give to the taxpayer a means of recovery in cases of fraud or error.

Practical Operation of Special Assessments.

Although the systems used for levying special assessments vary greatly in different localities, an analysis of these systems shows that the provisions may be classified into ten distinct headings:

1. Purpose of the assessment.
2. Acquisition of jurisdiction.
3. Notices and hearing.
4. Subjects assessed.
5. Rule of estimation.
6. Limitations on amount.
7. Confirmation.
8. Legal nature of charges in 7.
9. Methods of collection.
10. Remedies of the taxpayer.

Practically all of the American cities have the power to apply systems of special assessments for the purpose of constructing and improving streets, sidewalks and sewers. Some cities charge the cost of laying water pipes upon the benefitted property owners. Furthermore, there are instances where the funds for sprinkling the streets, erecting lamp posts, and even street lighting, have been raised by special assessments.

In order to protect the taxpayer, statutes and other legislative acts often require the fulfillment of a condition precedent before legal jurisdiction may be acquired. In a number of states there must either be a petition signed by a majority of the affected property owners or a favorable action by the board of local improvements, before the improvement can be authorized, and in some cases a petition of the majority of the affected property owners is absolutely necessary. In others the ordinance for the improvement must be passed by an increased vote of the city council. Furthermore, a remonstrance signed by a prescribed number of property owners may kill the proposed project.

Most corporate authorities give notice of the opportunity of the taxpayer to enter protests against the whole undertaking. The notices inform the affected property owner that the improvement is under consideration, and generally state the time and place of meeting of the authorized board or commission to whom the property owners may enter objections. There are, however, a number of cities in which no notice need be given until after the amount of the assessment has been determined.

"The rule most commonly applied in fixing the assessment

district is that of including all contiguous property to which benefits are supposed to accrue from the improvement in question. In Washington, New Orleans and Boston the property assessed must abut upon the line of work whose cost is sought to be thus defrayed. All such property is usually assessed; that is to say, the city pays its share upon whatever municipal property may be comprised within the assessment area. An exception is found in Philadelphia: here only such property is assessable as is also subject to the general property tax."[1]

In endeavoring to assess each piece of property according to the benefit it derives from the improvement in question, various mechanical methods are pursued. One of these methods is to lay off the improved districts into zones which are subjected to various rates. Other means commonly employed are: the determination by the frontage, or the area, or a combination of both, and by a direct estimation of the benefit to each piece of property.

The amount of the levy may be limited in several ways. First, it may be absolutely fixed, as is often the case with sewers ($1.50 per front foot). Second, the maximum charge may be determined beforehand. Third, the ratio of the amount of the assessment to the value of the property may be fixed. Fourth, the proportion of the assessment chargeable upon the property owners may be limited. In Washington, for instance, one-half of the expense is met by an appropriation of Congress.

When the several items on the assessment roll are confirmed by the body which ordered the assessment - generally the

(1) "Special Assessments," v. Rosewater.

city council - they become final charges. Most statutes provide that these final charges shall be a lien upon the property, but there are instances where they are considered as a personal liability of the owner.

Great variations exist in the methods employed to collect special assessments. In some cities, the special assessment is collected in the same manner as ordinary taxes. Recently, however, there has been a tendency to separate the collection of special assessments from the general taxes. At present the method of procedure in the collection of the assessment is described in detail either by the state statute or by the city charter. In these instances, the statute or charter defines the time when the assessments become delinquent, whether or not they are payable in installments, the rate of interest they are to bear, the penalties for non-payment, to what funds the assessments are to be accredited, etc.

The remedy of an aggrieved taxpayer may lie in the common law. Recent legislation, however, has given him the right to have a court pass upon the legality of all proceedings of the assessment, and to have a jury determine whether or not his assessment is commensurate with the benefit he receives.

From a legal point of view, the necessary steps, according to the ordinary method of procedure, may be grouped into five divisions:

1. A petition to, or a resolution by, the proper local authority, reciting the work to be done, and the limits of the district within which it is to be performed. This initiative may be taken by the interested property owners, or by some local

board, officer, or other corporate authority.

2. Favorable action upon this petition or resolution by the common council, or some other legislative body, so as to make it effective.

3. The necessity of the proposed local improvement is sometimes left to the discretion of the proper local authorities. It is often provided, however, that the notice of the time and place of the meeting of the authorities must be given to the interested property owners, so these authorities may hear the objections to the proposed improvement.

4. Making the assessment, with the notices to the interested property holders, so as to give them an opportunity to express their opinions.

5. Ratification or confirmation of the assessment.

This outline is neither exact nor universal; it merely covers all the essential steps required by law.

Special Assessment in Illinois

The first constitution of the state of Illinois, adopted in 1818, was silent on the subject of special assessment. In 1837, however, when the legislature granted the first charter to Chicago, a provision was included which gave the city the authority to levy special assessments on the basis of benefit. Article IX, section 5, of the second constitution, adopted in 1848, marked the next step in the development of special assessment in Illinois; this section provided that, "the corporate authorities of counties,

townships, school districts, cities, towns and villages may be vested with the power to asses and collect taxes for corporate purposes: such taxes to be uniform in respect to persons and property with the jurisdiction of the body imposing the same".[1] Under this constitution, the legislature, in passing an act incorporating a city or town, generally included in the act a special article which defined the method of procedure for levying a special assessment. A good illustration of such an act is the legislation "reducing the acts to incorporate the city of Springfield into one act."[2] According to the method of procedure therein prescribed, the city council, after having the property surveyed, published a notice of their intention to make the improvement. Then the council chose three disinterested freeholders as commissioners. If the improvement necessitated the damaging of property, this commission ascertained the amount of damage for each lot, and at the same time determined the amount each lot was benefitted by the improvement. If, however, it was not necessary to take property, the commissioners had only to determine the assessment on each piece of property affected by the improvement. The commissioners were required to return the assessment roll to the council within thirty days after their appointment. The city council then published the date set for the hearing of objections, and thereupon might either annul or confirm the assessment, or refer it back to the commissioners for

(1) The court construed this clause as imposing a limitation on the power of the legislature to grant the right of corporate taxation to any other than local corporate authorities. (Howard vs. St. Clair Drain Co. 51 Ill. 130)

(2) "Sessions laws, 1854," p. 31.

revision. The assessment was collected along with the general taxes and in the same manner. They were considered as a lien on the property, and in case of non-payment, the property of the delinquent owner might be sold to meet the assessment. Although the system, as outlined by this act, was crude, it seemed to give satisfation, and most of its provisions were adopted by many of the cities incorporated from 1854 to 1870.

The third constitution of Illinois, adopted in 1870, recited (Article XI, Section 9) that "The General Assembly may vest the corporate government of cities, towns and villages, with power to make local improvements by special assessment, or by special taxation of the contiguous property, or otherwise."[1] It was not, however, until 1872 that the nucleus of the present statute on special assessment was passed, and from 1872 to 1897, with the exception of a very few amendments, this statute underwent but slight change. Below is given a brief summary of the statute in question.

The city council passed an ordinance which provided for the making of the improvement. In case the improvement necessitated the damaging of property, the city filed a petition, containing a copy of the ordinance and a description of the lots damaged with their respective owners and occupants, in a court of record in the county, praying that "the just compensation to be made for the private property to be taken or damaged for the improvement or purpose specified in such ordinance shall be ascertained by a

(1) The Supreme Court of Illinois has interpreted this clause to produce the removal of any constitutional restrictions previously existing, and to permit legislative authorization of the frontage rule. (Wright vs. People, 94 Ill. 604 and Falch vs. People, 99 Ill. 137)

jury." With the petitions, a summons, returnable any day of the then present court term, was served to all the defendants. Upon the return of these summons, a jury determined the compensation for the damage sustained. After paying the amount of this damage, the city had full control of the property.

When the improvement did not require the taking or damaging of property, the city council appointed three men to make an estimate of the total cost of the improvement and to submit the same in writing to the council. When this estimate of cost had been approved, the council delegated some officer to file in the county court a petition containing the ordinance and the estimate of cost. Upon receiving this petition, the court appointed three commissioners to make out the assessment roll and a map of the improved district. Furthermore, these commissioners gave notice to each person assessed, both of the amount of the assessment and of the time and place of the final hearing. At any time during the hearing the court could modify, change, alter, annul or confirm the assessment, and the city clerk, after the final judgment had been certified by the clerk of the court, issued a warrant for the collection of the assessment. This warrant was sent to the collector, who published a notice stating that the assessment was due. From this point, the method of procedure is the same as for assessments, not collectible in installments, under the present method which is described in detail below. Likewise, the contract was let in the manner described under the present method of procedure except there was no provision which allowed the affected property owners to contract to do the work.

PRESENT METHOD OF PROCEDURE IN ILLINOIS

OUTLINE

Preliminary Proceedings

1. Resolution adopted by the board of local improvements.

2. Notices, containing substance of the resolution and date of public hearing, sent to affected property owners five days before public hearing.

3. Public hearing, at which nature, necessity and cost of the public improvement are discussed.

4. Ordinance, recommendation and estimate of cost sent to and passed by the city council.

Proceedings for Damaging Property

1. Petition filed in court of record, and court appoints two commissioners who act with the superintendent of streets in preparing a certified report.

2. A summons, returnable not less than fifteen days after its issue, sent to all defendants; notice of all proceedings to date published and posted.

3. Jury impanelled by court to determine compensation for each piece of damaged property.

4. Judgment entered or proceedings dismissed within ninety days after all judgments have been recorded.

Proceedings for Ordinary Improvements

1. Notice of passage of ordinance sent to all affected property owners within ten days after its passage.

2. Apportionment of cost and assessment roll made by proper officer.

3. Notice containing all general information and date and place at which application may be made for the confirmation of the final assessment, which date shall not be less than fifteen days after the mailing of the notice, sent to all affected taxpayers.

4. Notice of final hearing published and posted at least fifteen days before the final confirmation of the assessment.

5. Final hearing.

6. Assessment roll and judgments certified to collector who publishes notice that assessments are due.

7. Collector's report of delinquents sent to proper county officer.

8. Advertising for bids within ninety days after final confirmation of the assessment.

9. Letting of contract and notice of award.

10. Issuing of bonds.

Before describing the present method of procedure for levying special assessments, one must know the personnel of the board of local improvements. In cities of 50,000 and over, the mayor is required by statute to appoint a commissioner of public works, a superintendent of streets, a superintendent of special assessments, a superintendent of sewers, and a city engineer. In cities and towns of less than 50,000, the city council may provide by ordinance that the mayor appoint a superintendent of streets and a public engineer. The statute further provides that, for cities of 100,000 and over, the board of local improvements shall consist of the superintendent of special assessments, who acts as secretary of the board, and four other members nominated by the mayor and approved by the city council. For cities ranging in population from 50,000 to 100,000, the board of local improvements consists of five members of which the commissioner of public works is president. The superintendent of streets, the superintendent of sewers, the superintendent of special assessments and the city engineer constitute the remaining members of the board. In cities of less than 50,000, and in villages and incorporated towns, the board of local improvements is composed of the mayor, who is ex officio president of the board, and the superintendent of streets and the public engineer. In case these latter two officers are not provided for by ordinance, the city council elects two of its own members as members of the board of local improvements. The functions of this board will appear in the following discussion of the method of procedure.

All ordinances of local improvements, which are to be

paid for by special assessment, originate with the board of local improvements. Petitions from the people interested in the improvement are addressed to this board, and the board may originate a scheme for any improvement, with or without a petition. In either case, it adopts a resolution describing the proposed improvement, which resolution is transcribed to the records of the board. If the proposed improvement necessitates the destruction of private property, the resolution must contain a description of the property damaged, the date set for the public hearing - which date shall be at least ten days after the adoption of the resolution - and an itemized estimate of the cost of the improvement, generally made by the engineer. Not less than five days prior to the date set for the public hearing, the board sends to the person who paid the last general tax on each lot fronting on the proposed improvement, a mailed notice containing the substance of the resolution and the information that the extent, character, etc., of the proposed improvement may be changed at the public hearing. Furthermore, the notice states that if, after the public hearing, the board decides that the improvement is desirable, it will prepare an ordinance, together with its recommendation to be acted upon by the city council. In the construction or repairing of sidewalks, water pipes or house connections, the board of local improvements has only to submit to the council an ordinance together with the recommendation and the engineer's estimated cost of the improvement.

Public Hearing

At the time and place set for the public hearing, the

board of local improvements meets all interested persons, or their representatives, and discusses the necessity, nature and estimated cost of the proposed improvement. If there are objections, the board may pass a resolution abandoning the proposed improvement or changing the extent, character or estimated cost thereof, provided such a change does not increase the estimated cost of the improvement over twenty per cent. If the latter course is followed, the board prepares an ordinance, which describes the nature, kind, character and extent of the improvement, the description of all property damaged and the method of taxation to pay for the improvement.

In cities having a population of 100,000 or more, a remonstrance petition signed by the property owners of more than one-half of the frontage along the line of improvement filed with the board within thirty days after the public hearing compels the board to stop all proceedings for a period of one year. Having decided on the character of the improvement, the board presents to the city council the ordinance, a recommendation advising the construction of the improvement and an estimate of the cost of the improvement. If the estimated cost exceeds $100,000, the council publishes [1] the ordinance together with the recommendation and estimate of cost at least one week before the council takes any action. From this point the method of procedure for the ordinary assessment and for the assessment requiring the damage of property are entirely different.

(1) The Supreme Court has never passed upon this section (Sec. 11), and consequently the question of how and where the publication is to be made is left in doubt.

Procedure in Cases of Damaged Property

Whenever an ordinance passed by the city council necessitates the taking or damaging of private property, the council designates, generally in the ordinance, some officer to file a petition in some court of record in the county, "praying that steps may be taken to ascertain the just compensation to be made for the private property to be taken or damaged for the improvement or purpose specified in such ordinance, and to ascertain what property will be benefitted by such improvement, and the amount of such benefit." This petition contains a rather accurate description of all the property taken or damaged, and has attached to it a copy of the ordinance. The failure to attach the ordinance does not affect the jurisdiction of the court, but if the ordinance is not filed before the filing of the report of the commissioners, upon motion of any owner of damaged property, the entire petition and proceedings are dismissed.

Upon the filing of the petition the court appoints two disinterested persons as commissioners, who act with the superintendent of streets, (or with the president of the board of local improvements) in estimating the damage and benefit that each piece of property sustains on account of the improvement. They report to the court a just compensation to be allowed for each damaged parcel of property; "the concurrence of any two in a report is sufficient." This report is made in a prescribed form; it shows the amount of damage, and the amount of benefit sustained by each piece of property which is described in the report, and a balance is struck between these two items, which balance is the

amount collectible from the owner or is paid to him. No piece of property, however, can be assessed a greater amount than it is actually benefitted. Furthermore, it is the duty of the commissioners to estimate what part of the total cost of the improvement is of benefit to the public, and what part is of benefit to the property, and proportion the same between the municipality and such property. The commissioners, too, determine what property is specifically benefitted by the improvement and apportion the amount of benefit upon each lot.

In the court in which the petition was filed, the commissioners file their report together with a certificate stating that all the substance and data of their report are correct, equitable and just. The superintendent of special assessments (or president of board of local improvements) then files with the commissioners' report an affidavit stating that according to the records of the recorder's office the names and residences of the property holders given in commissioners' report are correct.[1] Furthermore, the affidavit states that he has visited each piece of property in question to determine whether or not it was occupied, and, if so, the name of the occupant, and that the data thus obtained agrees with that in the commissioners' report. Immediately after the filing of the commissioners' report, a summons, returnable any day in term time not less than fifteen days after its date, is served upon all the defendants.[2]

(1) In case the residence of the owner is unknown, the residency as shown in this report, is verified by the collector's tax warrants for the preceding year.

(2) The statute defines the defendants in all the court proceedings as every person named in the report either as an owner or occupant of the property damaged or taken.

"But if the service of such summons shall be had less than ten days before said return day, no steps shall be taken in said matter against the defendant so served, or his property, before the first day of the next term of said court which shall occur ten days or more after such service." For the benefit of non-residents and owners of unknown address, the court causes a notice of all the proceedings up to date to be published in a newspaper, at least once a week for four consecutive weeks, starting thirty days before the return day of summons. A similar notice is posted in two conspicuous places in the vicinity of the proposed improvement. At least fifteen days before the return day of the summons, notices are mailed to all affected persons residing without the state, and, in case the residency of the owner is unknown, a notice is mailed to the person who last paid the taxes on the property in question. Likewise, a notice, stating the nature of the improvement, the description of the property assessed, the amount of the assessment, and the dates for returning the summons and filing the objections, is sent to each property owner whose property has been assessed for benefits.

Upon the return of the summons, the court impanels a jury to determine whether the compensation allowed for the property damaged is just. At the same time, the jury detormines whether or not the assessment upon any lot for which an objection has been filed is more than the amount of benefit. In this hearing, the commissioners' report is considered as prima facie evidence, both of the amount of compensation to be awarded, and of the benefits to be assessed. Upon the motion of any petitioner the court may direct the jury, in charge of an officer, to view

the property in question. "Upon the return of the verdict of the jury, the court shall order the same to be recorded, and shall enter the judgment or decree, as the nature of the case may require. The court shall continue to adjourn the cause from time to time, as to all occupants and owners named in such petition who shall not have been served with process or brought in by notice or by publication, and shall order a new summons to issue and publication to be made, and upon such occupants and owners being brought into court, shall impanel a jury to ascertain the compensation so to be paid to such defendant or defendants for private property taken or damaged, and the amounts of benefits to be assessed against them, if any; and like proceedings shall be had for such purpose as hereinbefore provided in the case of other owners; but no final judgment shall be entered as to any of the property embraced in said roll until all the issues in the case have been disposed of, including revised or recast rolls, if any." The final judgment of the court is conclusive as to the damages and benefits resulting from such improvement. A special provision provides for cases of appeals which do not permit of a delay of proceedings. As soon as the amount of the compensation found by the jury has been paid to the entitled person, the court enters an order which gives the petitioner the right to take possession of the condemned property. Within ninety days after all the judgments have been recorded, the petitioner must elect whether it will dismiss proceedings or enter judgment on the verdict. If the latter alternative is chosen, the petitioner becomes liable and is allowed to withdraw from the proceedings only by unanimous consent of all the owners of damaged property. In

cases of a deficiency. the court may order the assessment roll to be again referred to commissioners, whose duty it is to revise the roll, until the deficit disappears.

Ordinary Assessments

"Whenever the owners of one-half of the property abutting on any street, etc., shall petition for any local improvement thereon, the board of local improvements . . . shall take the steps hereinbefore required for a hearing, thereon, but at such hearing shall consider only the nature of the proposed improvement and the cost thereof . . . " The board, as hereinbefore stated, draws up an ordinance and a recommendation for the city council. In case of renewal or repair of sidewalks, however, the property owner is allowed forty days after the ordinance takes effect in which to build or renew the sidewalk and relieve the property from the assessment, but the work so done must conform to the requirements of the ordinance. A notice of the passage of the ordinance is mailed ten days after the passage to each person who paid the taxes on the affected property for the preceding year, and to each occupant of the property.

Upon the passage of any ordinance for a local improvement it is the duty of an officer specified in the ordinance to file a petition in some court of record in the county, in the name of such municipality, praying that steps may be taken to levy a special assessment for the said improvement, in accordance with the provisions of the ordinance. As soon as the petition is filed, the superintendent of special assessments, or if there

is no such officer, a competent person appointed by the president of the board of local improvements makes a true and impartial assessment of the cost of the improvement, and, like the commissioners in cases of damaged property, he apportions the assessment between the municipality and the property benefitted. By an ordinance passed at any time before the confirmation the assessment of each person or corporation may be divided into equal installments not exceeding ten in number, except in cases of sewers, etc., where the number may be increased to twenty. With the exception of the first, all installments are equal in amount and are each a multiple of $100.00; the first installment has any fractional amount added to it. When finished, the assessment roll contains a list and description of each lot assessed, the amount of the assessment, the name of the person who paid the last general taxes on the lot, and, if possible, the residence of the taxpayer. The officer who makes the roll swears that the assessment on each lot is just and equitable and does not exceed the amount the lot is benefitted by the improvement. A notice containing general information concerning the nature of the improvement, the pendency of the proceeding, the time and place of filing the petition and the assessment roll, and the time and place at which application will be made for confirmation of the assessment - which time shall be not less than fifteen days after the mailing of the notice - is sent to the person who paid the last tax on the property in question. This notice, too, states the total cost of the improvement and the assessment of the individual to whom the notice is sent. Before the final hearing, the officer in charge files an affidavit, which shows

that he has complied with the above requirements and that he has made a diligent search for the residences of the owners of affected property in the tax collector's book and elsewhere.

At least fifteen days before the first steps in the confirmation of the assessment, the petitioner posts a notice in four public places in the vicinity of the improvement. The same notice is published in a newspaper, and takes the following form:

Special Assessment Notice

"Notice is hereby given to all persons interested that the city council (or the corporate authorities) of _____ having ordered that _____(a description of the nature of the improvement) _____ the ordinance for the same being on file in the office of the _____clerk, having applied to the _____ court of _____county for an assessment of the costs of said improvement according to benefits, and an assessment therefore having been made and returned to said court, the final hearing thereon will be had on the _____day of _____, A. D., 190__, or as soon thereafter as the business of the court will permit. All persons desiring may file objections in the said court before said day, and may appear in the hearing and make their defense."

_____ (Date)

When the assessment is payable in installments, the number of installments and the rate of interest appear in the notice.

At the specified time any interested person may file an objection to the report. Then the court may inquire whether

the officer making the report omitted any property benefitted, whether the assessment as made is just and equitable, and whether the apportionments are just. If any error is found, the court determines the manner in which such error shall be rectified, and refers the assessment roll to the person who filed it for revision and correction. At any time after the return day, the court may set a date to hear all objections, except the objection that the property of the objector will not be benefitted to the amount of the assessment, and that the property is assessed more than its proportionate share. The court's conclusions, except in cases of appeal, are final. In the exceptions above mentioned, the trial is by jury; the assessment roll, as revised, is considered as prima facie evidence. The usual proceedings of the court are followed, and the jury determines the amount the property in question ought to be assessed. If the jury should reduce or cancel any assessment, the court distributes the resulting deficiency upon the other property in the assessed district in a just and equitable manner. In which case, a new notice is given to the affected property holders, and this increase is treated in the same manner as the original assessment. Furthermore, the court has the authority to modify, change, annul or confirm any assessment, and it may issue all necessary orders to make a just assessment. Before levying a special assessment, the land necessary for the improvement must be in possession of the city. A prior improvement of the same kind is not considered a valid legal objection to the new improvement.

The judgments of the court on all issues involved are final; the proceedings of the court, however, are subject to

review by appeal or by writ of error. These judgments shall have the effect of several judgments as to each parcel or tract of land assessed, and no appeal from any such judgment or writ of error invalidates or delays the judgments, except as to the property concerning which the appeal or writ of error is taken. As with general taxation, these judgments are a lien on the property for a period of five years after the last payment becomes due. If any assessment is annulled by the city council, or by the court, a new assessment may be drawn up, the method of procedure being the same as described for the original assessment.

If, at any time after bids for the improvement are received, it appears to the board of local improvements that a deficit will result, the board files an estimate of the amount of such deficiency. Thereupon, a second assessment is levied to meet the deficiency, and so on until sufficient money is raised to meet the total cost of the improvement, and if the deficit exceeds ten per cent of the original estimate, a public hearing is allowed on the second assessment. On the other hand, if there is an excess above the total cost, it is distributed pro rata among the property owners from whom the assessment was collected. No more than one supplemental assessment may be had if the deficit is caused by the original estimate of the engineer.

Within thirty days after filing the date of the first voucher issued for payment of the work, the clerk of the court certifies the assessment roll and judgment [1] to the officer authorized by the city to collect the assessment, which certification is filed by this officer. From this assessment roll and

(1) Delays caused by appeal or writ of error are not included.

judgment, the clerk issues warrants for the collection of the assessment. At any time before the collection of the assessment or the sale of the property, the court may recall these warrants, if the proceedings are abandoned by the petitioner or the judgments are vacated or modified by the court. Similarly, the clerk certifies the assessment of the appealed cases as the judgment is rendered and sends the certification together with a warrant to the collector. Then the collector prints a notice in one of the city's newspapers; this notice takes the following form:

Special Assessment Notice

Special Warrant No._____

NOTICE: Public notice is hereby given that the _____(title of court)_____ has rendered judgment for a special assessment upon property benefitted by the following improvement: _____(description, character and location of the improvement)_____ as will more fully appear from the certified copy of the judgment on file in my office; that the warrant for the collection of such assessment is in the hands of the undersigned. All persons interested are hereby notified to call and pay the amount assessed at the collector's office, _____(location of office) within thirty days from the date hereof.

Dated this _____day of _____ A. D. 190__.

_____
Collector.

If the assessment is to be paid by installments, the amount of each installment and the rate of interest appears in the forogoing form. The first installment is due the second day of January after the first voucher was issued,[1] the second installment one year later, and so on. All installments bear interest from the date of the issue of the first voucher at the maximum rate of five per cent per annum. The interest on all unpaid installments is payable at the date set for the payment of installments. Any person may pay one or more installments, with the accrued interest, at any date before they fall due. It is the duty of the collector to request the payment of the assessment from each person assessed, and, to write the word "paid" opposite each lot on which the assessment is paid together with the name and post office address of each person making the payment, and the date of payment. On the first of April, the collector makes a written report to the general officer of the county, designated by the revenue laws, and applies for judgment to sell all land on which the assessment or any part of the assessment past due has not been paid. This report is prima facie evidence that all requirements of the law have been fulfilled. When this officer receives the report, he obtains judgment for the sale of the lands on which all or part of the assessment, including the accrued interest, has not been paid. The proceedings are the same as for delinquent general taxes. After the sale is made, the list of lots sold is returned to the

(1) Within thirty days after its issuance, the board of local improvements files with the clerk of the court the date the first voucher was issued and its amount.

office of the county clerk; redemption may be made as provided for by the general revenue laws. The collectors and the general officer of the county pay over to the city all money collected by them through the assessment, and the money realized from the sales at a time and in the manner prescribed by ordinance. In the proceedings to recover from sales, the general revenue laws apply, and any city, in default of other bidders, may become the purchaser of the property on sale.

Contract

No person or body of persons, taking any contracts from the city, and agreeing to be paid from funds raised by special assessment, can have any claim or lien on the city except for the collection of the assessment. The claims of the contractor are limited to the funds collected. The city treasurer keeps a special account with each special assessment warrant number and with the money received thereunder. If the expense of the improvement is more than $500.00, the contract, after being approved by the president of the board of local improvements, is let to the lowest responsible bidder. In case of any work for which the estimated cost is less than $500.00, the board of local improvements may order the work to be done by the city; the cost shall, in no case, exceed the lowest responsible bid received. Within ninety days after the court confirms the assessment steps must be taken to let the contract. If, however, another court having jurisdiction should stay proceedings, on account of appeal or writ of error, the steps for

letting the contract are not taken until fifteen days after the final decision of this court.

The board of local improvements publishes in a local newspaper a notice which contains such general information as the time of opening bids (between ten and fifteen days after publication), the place for finding the specifications for the improvement, and the manner in which the contractor is to be paid. Proposal or bids may be made for the work as a whole or for such parts thereof as are specified by the board of local improvements. All proposals are accompanied by cash, or a certified check, payable to the order of the presidnet of the board for at least ten per cent of the bid, and no proposal is considered unless either cash or check accompanies it. At the time and place specified in the notice, the boad of local improvements examines these bids and publicly declares them. The board may reject any and all bids, if it believes it best for the public good. If, however, the bids are satisfactory, it becomes the duty of the board to award the contract to the lowest responsible bidder, which award is recorded in the proceedings of the board. This award must be made within twenty days after the time fixed for receiving bids, and if it is not made within this time, the board proceeds with the advertisement for bids as before.[1] When any bidder fails to enter into the contract, after such contract has been let to him, the certified check accompanying his bid is forfeited to the city, and the money thus realized by the city is paid into the city's fund for repairing

(1) Any bidder or interested person is entitled to a hearing before the board on any question connected with the award of the contract.

like improvements. A notice of the award is published for two days in a daily newspaper in the city. Within ten days after the publication of this award, the property owners affected, or their agents, may elect to do the work at ten per cent less than the awarded contract price. If the owners fail to elect to enter into a written contract within ten days, or to commence work within thirty days after the publication of the award of the contract and to prosecute the work with diligence, it is the duty of the board of local improvements to enter into a contract with the original bidder to whom the original contract was awarded, at the prices specified in his bid. If, within fifteen days after the publication of the notice of the award, or ten days after the notice of the default of the property owners, the original bidder fails to enter into the contract, the board of local improvements again advertise for bids, as in the first instance. In such case, the bids of persons who have failed to enter into a contract, together with those of defaulting property owners, are rejected. All contractors, upon the execution of the contract, give bond guaranteeing the complete and faithful performance of the work; the amount of this bond must satisfy the board of local improvements. If the contractor fails to complete the work in the specified time, the board may re-let the unfinished part of the work, after pursuing the formalities described heretofore.

In towns of over 100,000, the board may select an attorney who shall have charge of all legal questions pertaining to the board of local improvements. It may also appoint an engineer and such assistants as may be necessary to conduct the

various functions of the board. Furthermore, it is the duty of the board of local improvements to execute the contract and all details relative to the contract. The work must be done under the direction and to the satisfaction of this board and, if so done, it is the duty of the board to accept the work.

Thirty days after the acceptance of the work, the board causes the cost thereof to be certified in writing to the court in which the assessment was confirmed, together with the board's estimate of the amount required to pay the interests accruing on bonds or vouchers issued to anticipate collection. Upon the board's filing with the county court the certificate of completion, the court by an order entered in record sets down the certificate for hearing upon a certain date, not less than fifteen days after the filing of the certificate. Notice is then given by publication of the date of such final hearing, and at this final hearing, any property owner affected by the improvement may be heard on the question of whether or not the improvement conforms substantially with the requirements of the original ordinance. The property owners may also be heard on the question as to whether or not the improvement actually cost the amount so certified by the board of local improvements. If the total amount assessed for the improvement exceeds the cost, "all of said excess . . . shall be abated and the judgment reduced proportionately to the public and private property owners and shall be credited pro rata upon the respective assessments for said improvement under the direction of the court."

If the court, at the final hearing, determines that the improvement does not conform to the original ordinance, it

then becomes the duty of the board to procure the completion of the improvement in conformity to the ordinance, and have the matter again set down for hearing in the same manner as hereinbefore stated.

It is the duty of the board of local improvements to provide for inspection of the work. Upon the complaint of any property owner that the work or material do not comply with the requirements, the president of the board, or some other member appointed by him, makes a personal examination of the work and certifies in writing the result of his examination. This certification is filed with the other papers of the board and may be inspected at any time.

For the purpose of anticipating the collection of the second and succeeding installments, the city may issue bonds, payable from these installments. These bonds are in denominations of one hundred dollars, or some multiple thereof, are payable annually, and bear five per cent interest from the date of issue. Each bond states on its face out of which installment it is payable, and the assessment to which such installment belongs - (the latter generally by number). These bonds are divided into as many series as there are deferred installments, and the principal of such bonds cannot exceed the aggregate amount of these deferred payments. These bonds may be sold or paid to the contractor for the improvement at par value and accrued interest. Any property owner may pay his assessment, in whole or part with the bonds issued on account of such assessment. In doing so, however, he may apply the bonds of each series only to the payment of the corresponding installments.

On or before January 10 of each year, the treasurer of the municipality in issuing bonds ascertains the amount of the collected assessment applicable to the payment of bonds, and selects by lot the series of bonds to be paid with this sum. He publishes in some newspaper the number and series of the bonds to be paid, the assessment to which they relate, the particular bonds payable, and that they will be paid at a specified place on February 10. No interest is paid on these bonds after that date. The city cannot be held liable for the non-payment of these bonds, except from the collections of the assessment against which the bonds are issued. The city, however, is supposed to use all legal means to raise money for the payment of these bonds.

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